

**Notice of Allowability**

Application No.

09/839,222

Examiner

Russell Frejd

Applicant(s)

TOPHOLM, JAN

Art Unit

2128

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's amendment received on 9.27.2004.
2. ☒ The allowed claim(s) is/are 1-9 and 11-54.
3. ☒ The drawings filed on 23 April 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|   | 9. <input type="checkbox"/> Other _____.   |

  
**RUSSELL FREJD**  
**PRIMARY EXAMINER**

In re Application of: Topholm

***Allowance of Application # 09/839,222***

1. The following communication is in response to applicant's Amendment, received 27-September-2004. The examiner contacted applicant's representative, David Cushing, Registration No. 28,703, on 13-January-2005, about the Remarks received on 27-September-2004. The statement indicated that claim 1 no longer stands in the case. Mr. Cushing indicated that the claim 1 does not stand in the case in its original form, as the limitations of claim 10 were incorporated into claim 1, and claim 10 was subsequently cancelled.

Furthermore, the examiner noted that the Amendment/Remarks did not address the double patenting rejection of claim 1 in the prior office action. Mr. Cushing verbally regretted the oversight, and explained his reasons as to why a terminal disclaimer was not required. The examiner agreed with the arguments, and has subsequently removed the double patenting rejection.

***Examiner's Amendment***

2. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the Issue Fee.

3. In the Specification:

Page 1      line 14      Change "5,487,017" to -5,487,012--.

In re Application of: Topholm

### ***Reasons for Allowance***

4. The following is an Examiner's Statement of Reasons for the indication of allowable subject matter. The instant application is directed to a non-obvious improvement over the invention described in U.S. Patent No. 5,487,012, issued to Topholm et al.. The improvement comprises a CAD/CAM system for design and manufacture of a hearing aid housing comprising a face plate and a shell that is matched to the auditory canal of a user, wherein the system receives and processes data representing the shape of the auditory canal, forms a three-dimensional model of the shell based on the received data, and produces the shell and face plate based on the model data. This patentable distinction is included in each of the independent claims, nos. 1, 12, 24, 38 and 42. The art of record, either individually or in combination, fails to teach, suggest, or render obvious the useful, concrete and tangible <CAD/CAM system for design and manufacture of a hearing aid housing comprising a face plate and a shell that is matched to the auditory canal of a user> having the corresponding structure which is disclosed in the specification and equivalents thereof at least at page 14, line 15 through page 24, line 33, and Figures 1-36. In view of the foregoing, the claims of the present application are found to be patentable over the prior art.

### ***Response Guidelines***

5. Any comments considered necessary by applicant **MUST** be submitted no later than the payment of the Issue Fee and, to avoid processing delays, should preferably accompany the Issue Fee. Such submissions should clearly be labeled "Comments on Statement of Reasons for Allowance".

In re Application of: Topholm

**6. Any response to the Examiner in regard to this allowance should be**

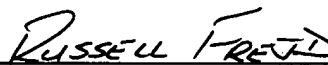
**directed to:** Russell Frejd, telephone number (571) 272-3779, Monday-Friday from 0530 to 1400 ET, or the examiner's supervisor, Jean Homere, telephone number (571) 272-3780.

**mailed to:** Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:** (703) 872-9306

*Hand-delivered responses should be brought to 220 South 20<sup>th</sup> Street, Crystal Plaza Two, Lobby, Room 1B03, Arlington. VA., 22202.*

**Date:** 7-February-2005

A handwritten signature in cursive script that reads "RUSSELL FREJD". The signature is written in dark ink and is positioned above a horizontal line.

**RUSSELL FREJD  
PRIMARY EXAMINER**